

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Norfolk Southern Railway Company,

Plaintiff,

v.

Edisto Recycling, LLC,

Defendant.

CIVIL ACTION NO.
3:25-cv-00250-MGL

VERIFIED COMPLAINT

Plaintiff Norfolk Southern Railway Company (“Norfolk Southern”), by and through its attorneys, files this Verified Complaint against Defendant Edisto Recycling, LLC (“Edisto Recycling”) and in support thereof, avers as follows:

PARTIES

1. Norfolk Southern is a corporation incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Atlanta, Georgia.

2. Norfolk Southern operates as an interstate rail carrier subject to the jurisdiction of the U.S. Surface Transportation Board (“STB”), and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

3. Edisto Recycling is a limited liability company organized and existing under the laws of the State of Wyoming and maintains its principal place of business in Calhoun County, South Carolina. It also maintains a scrap yard in Richland County, South Carolina which is where the most substantial portion of the acts complained of herein occurred.

4. Upon information and belief, no members of Edisto Recycling are domiciled in the Commonwealth of Virginia or the State of Georgia.

JURISDICTION

5. Jurisdiction is based upon 28 U.S.C. § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. §§ 10101 *et seq.*

6. In the alternative, jurisdiction is also based upon 28 U.S.C. § 1332 as the plaintiff and defendant are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

VENUE

7. Venue properly lies in this district pursuant to 28 USC § 1391(b) because Edisto Recycling is subject to personal jurisdiction in this judicial district, and a substantial part of the events or omissions giving rise to Norfolk Southern's claims occurred in this judicial district.

CAUSE OF ACTION

Failure to Pay Demurrage Charges

8. Pursuant to 49 U.S.C. § 10746, Norfolk Southern established rules related to the assessment and computation of railcar demurrage and railcar storage charges ("Demurrage Charges").

9. The rules, which set forth the manner in which Demurrage Charges are accrued and assessed, are set out in Norfolk Southern's Freight Tariff NS 6004-D, Freight Tariff NS 8002-A and Conditions of Carriage (collectively "Tariffs"), which are public documents filed with the Surface Transportation Board ("STB") and posted on the internet at www.nscorp.com.

10. In addition, Rule 300 of Norfolk Southern's Conditions of Carriage sets forth the manner in which finance charges associated with credit extensions are accrued and accessed.

11. Between November 2023 and November 2024, pursuant to the terms of Norfolk Southern's Tariffs, Norfolk Southern agreed to and did release railcars into the possession of Edisto Recycling, and Edisto Recycling accepted delivery of said railcars.

12. Prior to the delivery of the aforementioned railcars, Norfolk Southern provided Edisto Recycling with the requisite notice of Norfolk Southern's Tariffs and rates for services and Edisto Recycling has acknowledged receipt.

13. Further, Norfolk Southern and Edisto Recycling entered into a Siding Agreement dated August 22, 2023 which specifically incorporated Norfolk Southern's Conditions of Carriage and Tariffs. Paragraph 6(b) of the Siding Agreement specifically provided as follows:

All classifications, tariffs, and successor documents and all government, Association of American Railroads and carrier rules and regulations that do not expressly conflict with a term of this Agreement (collectively, the "Incorporated Provisions"), as such Incorporated Provisions may be promulgated or amended from time to time, are hereby incorporated into this Agreement by reference. The Incorporated Provisions shall specifically include, but shall not be limited to, Railway's Conditions of Carriage No. 1-series, all Railway Tariffs and referenced publications listed therein, and any supplements thereto or successor versions thereof

A Copy of the Siding Agreement is Attached as **Exhibit A**.

14. Between November 2023 and November 2024, Edisto Recycling failed to return possession of railroad-controlled railcars to Norfolk Southern within the allotted "free time" period prescribed by Norfolk Southern's Tariffs. Accordingly, Edisto Recycling has incurred Demurrage Charges by and through Norfolk Southern's Tariffs through December 2024, as follows:

Freight Bill No.	Waybill No.	Waybill Date	Amount Billed	Amount Paid	Net Amt. Due
2346181512	900909	12/11/2023	\$6,720.00	\$0.00	\$6,720.00
3010156803	900896	1/9/2024	\$26,760.00	\$0.00	\$26,760.00
3043496761	900918	2/11/2024	\$10,320.00	\$0.00	\$10,320.00
3072175473	900919	3/11/2024	\$2,160.00	\$0.00	\$2,160.00
3101155728	900942	4/9/2024	\$4,620.00	\$0.00	\$4,620.00

3131165737	900920	5/9/2024	\$17,160.00	\$0.00	\$17,160.00
3163179746	900908	6/10/2024	\$12,000.00	\$0.00	\$12,000.00
3193163694	900902	7/10/2024	\$24,960.00	\$0.00	\$24,960.00
3225492224	900897	8/11/2024	\$1,080.00	\$0.00	\$1,080.00
3255161007	900902	9/10/2024	\$1,260.00	\$0.00	\$1,260.00
3284168777	900886	10/9/2024	\$1,620.00	\$0.00	\$1,620.00
3317183676	900890	11/11/2024	\$2,280.00	\$0.00	\$2,280.00
3345174481	900857	12/9/2024	\$4,200.00	\$0.00	\$4,200.00
TOTAL					\$115,140.00

15. Norfolk Southern submitted invoices to Edisto Recycling for the Demurrage Charges, and Edisto Recycling received said invoices. True and accurate copies of the invoices for the Demurrage Charges are attached hereto as **Exhibit B**.

16. Edisto Recycling incurred Demurrage Charges in the amount of \$115,140.00. Edisto Recycling has not made any payments for these charges, leaving a current balance due of \$115,140.00, plus interest, finance charges, costs and fees.

17. Norfolk Southern has not agreed to any exemption from demurrage for Edisto Recycling and has invoiced and demanded payment for the subject charges. On December 6, 2024, undersigned counsel for Norfolk Southern sent correspondence to Edisto Recycling demanding prompt payment of the Demurrage Charges and finance charges due and owing to Norfolk Southern. A true and correct copy of the December 6, 2024, demand correspondence is attached hereto as **Exhibit C**. The amounts owed have increased since this December 6 letter to include additional charges incurred in November and December, 2024.

18. Norfolk Southern has performed all conditions precedent necessary to be entitled to payment of the Demurrage Charges from Edisto Recycling.

19. Despite demands for payment, to date, Edisto Recycling has failed and/or refused to pay the Demurrage Charges which remain due and owing to Norfolk Southern.

20. In addition, Edisto Recycling is liable to Norfolk Southern for certain additional Demurrage Charges and finance Charges which continue to accrue pursuant to Norfolk Southern's Tariffs and Rule 300 of Norfolk Southern's Condition of Carriage.

WHEREFORE, Plaintiff Norfolk Southern Railway Company respectfully demands that judgment be entered in its favor and against Defendant Edisto Recycling, LLC in an amount not less than \$115,140.00, in addition to any additional Turn Car, Demurrage Charges and finance charges which may accrue up until the time of trial, along with prejudgment interest, costs and attorneys' fees, as required by Norfolk Southern's Conditions of Carriage and other tariffs, and such other relief as the Court may deem proper.

This, the 14th day of January, 2025.

GALLIVAN, WHITE & BOYD P.A.

/s/ Ronald K. Wray, II

Ronald K. Wray, II (Bar #5763)

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**ATTORNEY FOR PLAINTIFF THE
NORFOLK SOUTHERN RAILWAY
COMPANY**

VERIFICATION

I, Kelley Childs, do hereby swear and affirm that I am the Assistant Manager - Revenue Accounting Customer Services for Norfolk Southern Railway Company, and am competent to testify and verify the allegations contained in the Verified Complaint and that they are true and accurate to the best of my knowledge and that, if called as a witness, I can testify to the same.

NORFOLK SOUTHERN RAILWAY COMPANY

1/7/2025
Date

By: Kelley ChildsIts: Assistant Manager - Revenue Accounting
Customer Services

Sworn to and Subscribed before me this
7th day of January 2025.

Shawna M. Miller
Notary Public for Fulton County, GA
My Commission expires: 08-23-2027

